

REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks.

By the foregoing amendment claim 1 has been canceled and claims 2-15 have been amended. Thus, claims 2-15 are currently pending in the application and subject to examination. No new matter had been added.

Under 35 U.S.C. § 103(a), claims 1-3, 6, and 7 are rejected as being unpatentable over an article from InfoWorld entitled "The e-music trap", published August 18, 2000 ("Trap") and claims 4, 5, and 8-15 are rejected as being unpatentable over Trap in view of Official Notice. It is noted that claim 1 has been canceled and claims 2-15 have been amended. To the extent that the rejections remain applicable to the claims currently pending, the Applicant hereby traverses the rejections, as follows.

The Applicant submits that the cited references do not disclose or suggest a transmission device including at least the combination of a data receiver configured to receive a first part of a content file transmission, and an indication of payment parameters required for exploiting content of the content file transmission in a distributed peer-to-peer network; a service logic for grouping the first part of the content file transmission and subsequent parts of the content file transmission as a communications flow in the distributed peer-to-peer network; a payment logic for determining the payment parameters of the content file transmission in the distributed peer-to-peer network according to the indication of payment parameters, wherein the payment logic offers the option of billing payment to a network access provider of a subscriber; and a switching apparatus for transporting the first part and subsequent

parts of the content file transmission to a communications port according to the communications flow determined by the service logic in the distributed peer-to-peer network, as recited in amended claim 2.

The Office Action asserts on page 3 and 4 that each of the elements of previous claim 2, while not disclosed in Trap, would be inherent.

For example, on page 3, the Office Action asserts that although the reference does not disclose a system operating over a peer-to-peer network, the entire reference is about the fallout over the Napster and MP3.com lawsuits and although the suggestions in the article are for online retail of music, it would have been obvious to apply the same methodology to peer-to-peer music systems. The Applicants respectfully disagree and submit that Trap discusses online retailer type approaches for on-line music retailers to provide a more desirable option for consumers, such as by providing subscription services or tacking the music bill onto the monthly Internet access bill. Trap focuses on making on-line retail a more desirable alternative to peer-to-peer networks, rather than incorporating such features into a peer-to-peer network. Thus, the Applicants submit that a modification as suggested by the Examiner would improperly change a principle of operation of the Trap reference. See MPEP § 2143.01.

Furthermore, claim 2, as amended, clarifies that the data receiver receives a first part of a content file transmission and an indication of payment parameters in a distributed peer-to-peer network. A distributed peer-to-peer network is different than the peer-to-peer networks used by Napster, MP3.com, AOL, etc. While peer-to-peer, those networks had a centralized directory and user portal such as "napster.com." Thus, they included a central authority for subscribers and content and a peer-to-peer file

downloading system. Thus, those networks were merely another aggregator of content and subscribers. The peer-to-peer portion was a file storage and file transmission system, where each subscriber could act as a client of a server for the entire music file.

In contrast, the invention recited in amended claim 2 operates over a “distributed peer-to-peer network.” A distributed peer-to-peer network does not have a central authority for authenticating subscribers, whereas the peer-to-peer network mentioned in Trap use a subscriber identity or subscriber login rather than identifying the subscriber ID of the subscriber’s ISP. The invention recited in amended claim 2 allows the transmission device to dynamically associate a peer-to-peer content file transmission with the authenticated subscriber ID of the ISP where the subscriber is accessing the network.

Also, by aggregating content and subscribers, the peer-to-peer networks described in the article provide a single clearing house for payment and access to content. In contrast, a distributed peer-to-peer content file transmission system, as recited in amended claim 2, does not aggregate content or subscribers at any single location. Thus, there is no clearing house and no authority. Every node in the distributed peer-to-peer network can begin sending and receiving files of content at any time to any location. The invention recited in amended claim 2, includes a service logic for grouping the first and second part of the content file transmission and a switching apparatus for transporting the first part and subsequent parts of the content file transmission to a communication port according to the communications flow determined by the service logic in the distributed peer-to-peer network. Thus, the invention in amended claim 2 provides a way to authenticate subscribers and content in a

distributed peer-to-peer network, regardless of where and how the content file transmission is served.

The Office action also asserts that the claimed service logic for grouping the first part of the content transmission and subsequent parts of the content transmission are inherent because "reunification of parts is inherent in the art of electronic communications."

This is not correct in a distributed peer-to-peer network. Such reunification is true only in the traditional client-server communication exchanged. In a distributed peer-to-peer network, there was no way to associate portions of files that are being transmitted. The content file is broken up into small parts and each part is transmitted as a single communication exchange. Although each part is reunified by the receiver, it is only the user's PC, for example, that can group all of the parts together into the content file. In contrast, amended claim 2 recites, in part, "a service logic for grouping the first part of the content file transmission and subsequent parts of the content file transmission as a communications flow in the distributed peer-to-peer network."

For at least this combination of reasons, the Applicant submits that claim 2, as amended, is allowable over the cited art. As claim 2 is allowable, the Applicant submits that claims 3-15, which depend from allowable claim 2, are therefore also allowable.

CONCLUSION

For all of the above reasons, it is respectfully submitted that the claims now pending patentability distinguish the present invention from the cited references. Accordingly, reconsideration and withdrawal of the outstanding rejections and an issuance of a Notice of Allowance are earnestly solicited.

Should the Examiner determine that any further action is necessary to place this application into condition for allowance, the Examiner is encouraged to telephone the undersigned representative at the number listed below.

In the event this paper is not considered to be timely filed, the Applicant hereby petitions for an appropriate extension of time. The fee for this extension may be charged to our Deposit Account No. 01-2300. The Commissioner is hereby authorized to charge any fee deficiency or credit any overpayment associated with this communication to Deposit Account No. 01-2300 with reference to Attorney Docket No. 026215-00005.

Respectfully submitted,

Arent Fox LLP

A handwritten signature in black ink, appearing to read "Sheree Rowe", written in a cursive style.

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